

ADVANCED ENERGY BUYERS GROUP

the policy voice of advanced energy purchasers

COMMENTS OF THE ADVANCED ENERGY BUYERS GROUP

Re: California Public Utilities Commission
Customer Choice Project: Draft Gap Analysis / Action Plan

Submitted November 13, 2018

I. INTRODUCTION

The Customer Choice Project initiated by the California Public Utilities Commission (“CPUC” or “Commission”) provides a pathway for the state to ensure that expanded opportunities for customer choice are consistent with—and even accelerate—the state’s goals of affordability, reliability, and decarbonization of the electricity sector. The Advanced Energy Buyers Group (“AE Buyers Group”) strongly believes that, if implemented carefully, customer choice will bring a range of important benefits to the state, and we appreciate the opportunity to provide feedback on the draft paper, *California Customer Choice: Draft Gap Analysis / Action Plan* (“Gap Analysis / Action Plan”).¹

The AE Buyers Group represents the views of a coalition of large electricity customers, with member companies spanning the retail, manufacturing, and technology sectors. Our companies have a significant collective footprint in California, and our comments reflect our

¹ California Customer Choice Project Staff, *California Customer Choice: Draft Gap Analysis / Action Plan* (October 2018), available at <http://www.cpuc.ca.gov/customerchoice>.

perspective as large electricity users, and as businesses committed to increasing our own use of advanced energy, including renewable energy, energy efficiency, energy storage, electric vehicles, and demand-side management solutions.²

In the comments that follow, we first provide an overview of the Advanced Energy Buyers Group, then explain our overall position with respect to the Customer Choice Project and customer choice in California, and finally provide specific input in response to select portions of the draft Gap Analysis / Action Plan.

II. ABOUT THE ADVANCED ENERGY BUYERS GROUP

The Advanced Energy Buyers Group is a business-led coalition of large energy users engaging on policies to expand opportunities to procure energy that is secure, clean, and affordable. Members of the Buyers Group are market leaders and major employers spanning different industry segments, including technology, retail, and manufacturing. Our companies are among the 71% of Fortune 100 companies and 43% of Fortune 500 companies that have established renewable and/or climate targets as part of our corporate sustainability commitments. We share a common interest in expanding our use of advanced energy, including renewable energy like wind, solar, geothermal, and hydropower; demand-side resources like energy efficiency, demand response, and energy storage; and onsite generation from solar, advanced natural gas turbines, and fuel cells.

In 2017, members of the AE Buyers Group totaled over \$1 trillion in revenue and collectively consumed over 18 terawatt hours (TWh) of electricity, including over 11 TWh of

² These comments represent the consensus view of the Advanced Energy Buyers Group (information and membership available at <https://info.aee.net/ae-buyers-group>). However, this document does not necessarily reflect the position of any specific member of the AE Buyers Group, and these comments should not be attributed to any individual company or companies participating in the AE Buyers Group.

renewable electricity, equivalent to the electricity sales for the states of North Dakota and Delaware, respectively.

Collectively, as described in our comments submitted in response to the Commission's Draft Green Book,³ our companies have experience participating in the California market in many different ways: as customers of investor-owned utilities (IOUs), as direct access customers working with electric service providers (ESPs), as participants in Community Choice Aggregators (CCAs), and as hosts of behind-the-meter installations. While we have taken steps to meet our electricity needs in California with advanced energy, we also note that the market overall provides limited options for customer choice relative to many other states, especially for customers unable to participate in the direct access market.

III. COMMENTS

A. The AE Buyers Group Appreciates the Iterative Stakeholder Process and Action-Oriented Approach of the Customer Choice Project, and Agrees with the Overall Intent of the Draft Gap Analysis / Action Plan.

The questions raised throughout the course of the Customer Choice Project are complex and multifaceted, and the AE Buyers Group appreciates that the Project Team has chosen to take a thoughtful and deliberative process rather than rushing into answers. The AE Buyers Group also appreciates the multiple opportunities for stakeholder feedback through informal comments and multiple *en banc* hearings, and we look forward to continued opportunities to weigh in on various proceedings, analyses, and other actions as the Gap Analysis / Action Plan is finalized and operationalized.

³ Comments of the Advanced Energy Buyers Group re: *Customer Choice Project: Draft Green Book* (June 11, 2018), available at http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Energy_-_Electricity_and_Natural_Gas/Advanced%20Energy%20Buyers%20Group_DraftGreenBookComments.pdf.

The AE Buyers Group especially supports the recognition that customer choice will continue to expand and evolve, and we agree with the CPUC’s instinct to prepare for and address any potential challenges that come along with these changes rather than attempting to preserve the status quo. Specifically, the draft Gap Analysis / Action Plan acknowledges, “Diverse technologies and business models that allow consumers of many types to have greater control over how they obtain their electricity *will continue to expand* and reshape our previously centralized and controlled electricity markets [emphasis added].”⁴ The draft Gap Analysis / Action Plan further states, “The CPUC finds that it is important to identify and take action to address potential problems before they become troublesome or even catastrophic.”⁵ The AE Buyers Group strongly supports this forward-looking approach, and we encourage the CPUC to follow through with its stated goal of managing and preparing for the inevitable expansion of customer choice and evolution of technologies and business models.

B. Customer Choice is an Important Tool to Meet the Needs of Existing Customers and to Encourage Economic Development in California.

Members of the AE Buyers Group are sophisticated energy managers with diverse electricity needs and preferences; customer choice is key to ensure we can meet those needs—including our renewable energy goals—in a tailored and cost-effective way. For businesses already operating in California, and for businesses considering expanding or entering into the state, the availability of customer choice is an important consideration. Expansion of customer choice opportunities is therefore an important economic development tool, and should be considered as such.

⁴ Draft Gap Analysis / Action Plan at 3.

⁵ Ibid.

As noted previously, members of the AE Buyers Group range across multiple sectors, and our operations in California include office buildings, manufacturing sites, retail stores, distribution centers, data centers, university campuses, and more. Our companies have different load profiles, different opportunities for onsite generation and load management, different geographic spread across the state, and different appetites for financial and technology risk; we are also tracking toward different renewable energy and sustainability goals. These operational differences translate into unique electricity needs and energy management strategies.

To meet our energy needs and preferences, and to meet our renewable energy and sustainability targets cost-effectively, we therefore require not just a set of fixed options, but true choice and control over our electricity purchases. Our comments in response to the draft Green Book identified ways that members of the AE Buyers Group are working with all forms of load serving entities (LSEs), including IOUs, CCAs, and ESPs, as well as directly with third-party providers, to meet our electricity needs and make progress toward our renewable energy targets. However, the only way to fully achieve the degree of choice and control that our companies prefer is through Direct Access (DA), which allows our companies to work with any LSE that operates in a particular jurisdiction and is able to provide solutions that meet our needs. For this reason, the AE Buyers Group supported passage of Senate Bill 237 (SB 237),⁶ passed in 2018, and we continue to advocate for additional expansion of the DA cap through full implantation of SB 237 (as discussed below).

Having the ability to control our electricity choices through expansion of DA to all nonresidential customers will ensure that our companies and others are able to meet our electricity

⁶ See joint letter with Advanced Energy Economy to the Legislature in support of SB 237, July 19, 2018; AE Buyers Group letter to Governor Brown in support of SB 237, September 7, 2018; both available at <https://www.advancedenergybuyersgroup.org/policy-engagement>.

needs and preferences in California, driving economic development while also enabling customers to be a part of the solution toward a more affordable, reliable, and decarbonized electricity system.

This end goal motivates our comments in response to the draft Gap Analysis / Action Plan.

C. The Gap Analysis / Action Plan Provides a Clear Pathway for Full Implementation of SB 237, and Should be Used to Address any Potential Concerns that might Prevent Expansion of Direct Access for all Nonresidential Customers.

The AE Buyers Group recognizes that the Customer Choice Project does not intend to set the course for how and when customer choice options should expand and evolve. However, as noted above, it does provide an opportunity for the Commission to ensure that this evolution is consistent with the overall needs and goals of the state's electricity system. As such, the Gap Analysis / Action Plan provides a clear pathway to ensure smooth and successful implementation of SB 237. In particular, in addition to expanding DA by 4,000 GWh, SB 237 also directs the Commission to provide recommendations for full reopening of DA to all nonresidential customers. The bill directs that by June 1, 2020 the Commission must "provide recommendations to the Legislature on implementing a further direct transactions reopening schedule, including, but not limited to, the phase-in period over which the further direct transactions shall occur for all remaining nonresidential customer accounts in each electrical corporation's service territory."

The language of the bill specifies conditions that the Commission must meet in providing this recommendation, and requires the Commission to find:

- (A) The recommendations are consistent with the state's greenhouse gas emission reduction goals.
- (B) The recommendations do not increase criteria air pollutants and toxic air contaminants.
- (C) The recommendations ensure electric system reliability.
- (D) The recommendations do not cause undue shifting of costs to bundled service customers of an electrical corporation or to direct transaction customers.⁷

⁷ SB 237, 2018 Regular Session (Calif. 2018).

The Customer Choice Action Plan provides a process to ensure that reopening of DA to all nonresidential customers will meet these requirements. The AE Buyers Group urges the CPUC to keep in mind the requirements of SB 237 when implementing the Gap Analysis / Action Plan to ensure that there are no barriers to full reopening of DA for nonresidential customers. Specifically, the CPUC should review the draft Gap Analysis / Action Plan to verify that the steps already identified for future action would allow for a full re-opening of DA to nonresidential customers that will meet criteria (A) through (D). If any remaining gaps exist, these should be included in the Gap Analysis and incorporated into the Action Plan.

D. The AE Buyers Group Provides Recommendations and Comments on Specific Items and Issues Identified in the Gap Analysis / Action Plan.

In addition to the overarching recommendations provided above, the AE Buyers Group wishes to provide specific input in response to select sections of the draft Gap Analysis / Action Plan, taken in the order that they appear in the draft.

a. AE Buyers Group urges the CPUC to ensure that necessary customer protections are in place, including sufficient funding for Public Purpose Programs, to avoid creating unnecessary barriers to expanded customer choice.

While members of the AE Buyers Group do not identify any gaps in customer protection in California that impact our companies, we support efforts to implement any necessary additional customer protections alongside expansion of customer choice. Based on our experience in other markets, we strongly believe that expanded customer choice need not come at the expense of any customer or class of customers—in fact, customer choice can bring significant benefits to all customers in the form of lower costs and increased control and optionality. The AE Buyers Group strongly argues that any potential adverse outcomes with respect to customer protection can be managed and avoided, and should not present a barrier to customer choice.

In particular, the AE Buyers Group notes that the need to fund public purpose programs should not in any way impede expansion of customer choice. Such charges are already non-bypassable, and therefore funding levels for these programs should not be adversely impacted by expansion of customer choice. The AE Buyers Group encourages the Commission to address any concerns it has regarding funding levels by first studying the desired level of funding for Public Purpose Programs, and then determining a fair and equitable distribution of these costs through non-bypassable rate components for all customers.

b. The AE Buyers Group advocates rate constructs based on cost-of-service, and recommends steps to avoid cost shifting.

The draft Gap Analysis / Action Plan raises several questions with respect to rate design, and identifies a number of areas for further analysis. In response, the AE Buyers Group makes the following overarching observations:

- **The AE Buyers Group supports cost-of-service principles.** Members of the AE Buyers Group support rates that charge our companies according to the cost of meeting our electricity needs. This principle applies to transmission and distribution, generation, and customer-sited resources. Should the Commission conduct analysis or propose changes to any component of customer rates, we encourage strict adherence to cost-of-service principles to ensure that all customers are paying their fair share, and to ensure that technology adoption is neither unfairly subsidized nor unfairly undervalued. Adherence to this principle will also ensure that IOUs are able to recover sufficient T&D costs regardless of departing customer load.⁸ We also note that we already have access to time-of-use rates

⁸ The AE Buyers Group notes that the draft Gap Analysis / Action Plan raises the question of how departing customer load will impact the ability of utilities to collect T&D charges. Specifically, the draft recommends studying “the impact of departing customers on the utilities’ ability to collect transmission and distribution charges under the current rate structures.” We do not see this as an issue that should be in conflict. *See* Gap Analysis / Action Plan at 45.

from non-IOU LSEs, but should the Commission feel that additional analysis of the need to expand TOU options is necessary, the AE Buyers Group would not oppose such analysis.

- **The AE Buyers Group encourages against cost shifting to new customers.** The AE Buyers Group includes member companies that may bring new, unanticipated load to California. We believe that new load should not be subject to legacy or stranded costs, and encourage rate design that holds marginal load customers responsible for complete cost recovery without unfairly burdening such customers with costs for investments and services that they have not used.

By implementing these two simple principles consistently across the various proceedings and actions identified under the “Duty to Serve” category, the CPUC will ensure that all customers are treated fairly as customer choice expands.

- c. **With respect to reliability and resource procurement, the AE Buyers Group takes issue with the implication that customer choice is at odds with resource adequacy and decarbonization, and encourages steps to allow market competition and ensure that customers can retain control of their own long-term contracts.**

The draft Gap Analysis / Action Plan identifies a conflict between decarbonization and the efficiency of market-driven outcomes. Based on our experience across different markets and within our own operations, the AE Buyers Group strongly disagrees that any such conflict exists.

The draft Gap Analysis / Action Plan states:

Retail competition is intended to use market competition forces to lower costs for consumers. However, the Legislature has competing goals to foster decarbonization of the economy through directed regulations, such as the RPS and IRP. The tension between utilizing markets to achieve lower costs and state-based policy initiatives designed to foster decarbonization has to be harmonized; at the present time, *the multiple state policy objectives of efficiency of markets vs. decarbonization appear to conflict with each other* on a practical, implementation level. [Emphasis added.]⁹

⁹ Draft Gap Analysis / Action Plan at 49.

The AE Buyers Group strongly disagrees with this assessment. In fact, market efficiency and decarbonization have never been more aligned. Customer preferences for low- and zero-carbon resources, combined with the falling cost of such resources, provides a strong market driver for continued decarbonization, independent of state policy. Layered on top of these market drivers, state policy measures provide a framework and a backstop to ensure that the market will deliver on the greenhouse gas reduction targets set out by the state. The availability of market-based competition does not inherently conflict with the objective of lowering greenhouse gas emissions, and actually serves to ensure that these targets are met in the most cost-effective manner.

Outcomes in other markets bear out our view that market competition need not be seen as conflicting with state policy objectives such as decarbonization. Many fully restructured states are tracking toward ambitious renewable portfolio standards, and the northeastern states participating in the Regional Greenhouse Gas Initiative (RGGI) are all fully restructured.¹⁰

From a customer perspective, the AE Buyers Group is interested in expanded choice in large part because it provides a clear pathway for our companies to meet our own decarbonization goals cost-effectively. Members of the AE Buyers Group utilize direct access, retail choice, and market-based rate options to pursue long-term contracts with renewable energy projects in states across the country, where these options are available. For example:

- **California DA customer projects:** Because of its participation in the DA market, Apple, Inc. was able to sign a power purchase agreement (“PPA”) with First Solar for 130 MW of

¹⁰ Virginia, which is considering entry into RGGI, would be the first exception.

the California Flats project in Monterey County.¹¹ This project provides electricity for Apple's operations in the state.

- **PPAs in other jurisdictions that allow customer choice:** Walmart has signed two load-serving power purchase agreements (PPAs) in Texas, and has recently announced load-serving PPAs in PJM interconnection and Midcontinent Independent Operator territory.¹² Walmart is able to use these long-term contracts to meet its electricity needs due to the availability of competitive wholesale and retail markets in these regions.

By allowing long-term renewable energy contracts, expanded customer choice complements, rather than undermines, California's decarbonization and resource adequacy goals.

With respect to customer-driven long-term renewable energy contracts in California, the most important factor is availability of DA service. Customers in California can only access long-term renewable energy contracts through DA, and they can only do so if they have sufficient load under the DA cap and sufficient confidence that their DA load is not at risk. The greater the regulatory risk in the DA market, the less likely DA customers will be to engage in long-term contracting.

The AE Buyers Group is likewise concerned that introduction of a central procurement agency or coordinated multi-party procurement may interfere with a truly competitive market, including customer-driven long-term contracting. The AE Buyers Group recommends consideration of an approach that sets clear parameters for meeting state decarbonization goals and

¹¹ Mark Sullivan, "Apple Now Runs on 100% Green Energy, and Here's How It Got There," Fast Company (Apr. 9, 2018), <https://www.fastcompany.com/40554151/how-apple-got-to-100-renewable-energy-the-right-way>; First Solar, "California Flats Solar Project" (2016), http://www.firstsolar.com/-/media/First-Solar/Project-Documents/CAFlats_03391_DS_NA.ashx.

¹² "Walmart, EDP Renewables Announce Three Wind Energy Power Purchase Agreements," (Oct. 16, 2018), <https://news.walmart.com/2018/10/16/walmart-edp-renewables-announce-three-wind-energy-power-purchase-agreements>.

resource adequacy needs, but that lets the market determine how to best deliver upon these needs. Under any proposal, the AE Buyers Group emphasizes the importance of allowing customers to enter into long-term contracts for renewable energy.

d. The AE Buyers Group notes that the Gap Analysis / Action Plan has overlooked regionalization and the beneficial role of customers.

The AE Buyers Group commends the Customer Choice Project team for a thorough analysis of current gaps and recommended actions, but notes that some important considerations were overlooked. Specifically, the AE Buyers Group recommends consideration of the following:

- **Full consideration and acknowledgement of the potential for customers to accelerate achievement of California's goals.** The draft Gap Analysis / Action Plan places its primary focus on challenges that come along with expanded customer choice. However, this framing, while understandable, discounts the opportunity for expanded customer choice to complement and accelerate progress toward the state's goals of affordability, reliability, and decarbonization. Customers—including large customers such as members of the AE Buyers Group as well as small commercial and residential customers—have demonstrated a clear interest in a range of technologies and services that are consistent with the state's policy goals, including renewable energy, electric vehicles, demand response, energy efficiency, and energy storage. Combined with new data and management tools, these technologies enable customers to play an active role in the transition to a more affordable, reliable, and clean electricity system. Rather than focusing primarily on steps to avoid harm, the Gap Analysis / Action Plan should place equal emphasis on opportunities to enhance customers' contributions to affordability, reliability, and decarbonization.

- **Recognition of customer choice as an economic development opportunity.** As discussed above, the AE Buyers Group knows firsthand that affordable electricity service and the opportunity to control and manage our electricity supply are important considerations as we look to move or expand our operations. Customer choice is therefore a key element of an attractive business environment, and a tool for economic development. The CPUC should consider bringing in additional agencies, such as the Governor’s Office of Business and Economic Development, to weigh in on the Gap Analysis / Action Plan to ensure that these benefits are fully taken into account.
- **Consideration of the impact of expanding the California Independent System Operator to include additional states.** The AE Buyers Group notes that an expanded California Independent System Operator (CAISO) would contribute important benefits to the California market, with implications for customer choice. Specifically, an expanded CAISO would affect resource adequacy, decarbonization, reliability, and affordability—likely all to the benefit of California customers. The AE Buyers Group recommends adding to the Action Plan an analysis of how CAISO expansion would impact the other needs and challenges identified in the draft Gap Analysis / Action Plan.

Addition of these three elements would more fully capture the scope of the questions the state is facing with regard to customer choice.

IV. CONCLUSION

The AE Buyers Group views customer choice as an important tool to meet the state’s goals of affordable, reliable, and decarbonized electricity while also encouraging economic development. We support the Commission’s effort, through the Customer Choice Project, to ensure that the expansion of customer choice occurs in a way that works for all California

customers, and we appreciate the opportunity to provide input on the draft Gap Analysis / Action Plan. In the wake of passage of SB 237, the Customer Choice Project has gained additional importance as a means to ensure that California's market is prepared for a full reopening of DA to all nonresidential customers.